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|--|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/628,060   | 07/25/2003  | Sarah Mailefer       | 2652                | 4150             |
| 7590 04/01/2009<br>STRIKER, STRIKER & STENBY<br>103 East Neck Road<br>Huntington, NY 11743 |             |                      | EXAMINER            |                  |
|  |             |                      | VAKILI, ZOHREH      |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 1614   |             |                      |                     |                  |
| MAIL DATE  |             | DELIVERY MODE        |                     |                  |
| 04/01/2009   |             | PAPER                |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |
|------------------------------|--------------------------------------|---|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/628,060 | <b>Applicant(s)</b><br>MAILLEFER ET AL. |
|                              | <b>Examiner</b><br>ZOHREH VAKILI     | <b>Art Unit</b><br>1614                 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 January 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 and 25-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 25-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**Claims 1-18 and 25-32 are presented for examination.**

Applicant's Amendment filed January 5, 2009 has been received and entered into the present application. Claims 1-18 are withdrawn. Claims 25-32 are pending and are herein examined on the merits.

Applicant's arguments, filed January 5, 2009 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

***Claim Rejections - 35 USC § 102 (New Grounds of Rejection)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 25-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Stein et al. (US Pat. No. 6582679 B2).

Stein et al. teach a wax product for treating or setting up a hairstyle or hairdo includes a composition containing at least one wax or wax-like substance, at least one non-volatile liquid hydrophobic oil. The wax produced is easily worked into the hair and very effectively fixes or sets the hair (see abstract). Styling wax compositions are known products for hair treatment. They particularly find application in putting short to medium length hair in a fashionable hairstyle and impart hold and luster as well as stabilize, condition and fix the hairstyle. They provide the hairstyle with shape and luster (col. 1, lines 16-21). The **wax** or wax-like substances contained in the composition in an amount of from **5 to 30** percent by weight, the liquid hydrophobic oil is preferably contained in an amount of from 5 to 30 percent by weight (col. 4, lines 60-66). Chiefly known waxes according to the state of the art can be used as the wax or wax-like in the composition according to the invention. These waxes include animal, vegetable, mineral and synthetic waxes, solid paraffins, petrolatum (Vaseline.RTM.), ozocerite, montan wax, Fischer-Topsch waxes,polyolefin waxes, such as polybutene, bees wax, wool wax and its derivatives, such as wool wax alcohols, candelilla wax, carnauba wax, japan wax, Preferably at least one wax is present in the composition of the invention (col. 5, lines 35-45). Suitable vegetable oils include e.g. sunflower seed oils, coconut oil, **castor oil**, lanolin oils, jojoba oil, corn oil and soy oil (col. 6, lines 3-5).

Preferred embodiments of the hair wax product of the invention include at least one **emulsifier**. The emulsifiers are preferably contained in an amount of from 0.5 to 20 percent by weight. Preferred emulsifiers are selected from the group of non-ionic surfactants. Suitable non-ionic surfactants include, e.g., addition products of 2 to 30 mol **ethylene oxide** with fatty alcohols having 8 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; addition products of 1 to 5 mol propylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 1 to 5 mol of propylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 1 to 5 mol propylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; fatty acid mono- and diesters having 12 to 22 carbon atoms of addition products of 1 to 30 mol **ethylene oxide with glycerol**; addition products of 5 to 60 mol of **ethylene oxide with castor oil**; and monoesters, diesters and triesters of phosphoric acid and addition products of 2 to 30 mol of **ethylene oxide with fatty alcohols** having 8 to 22 carbon atoms; or mixtures thereof (col. 6, lines 10-38). This type of composition in addition to the above-mentioned ingredients has solvents, such as water or univalent or multivalent C.<sub>sub.1</sub> - to C.<sub>sub.2</sub> -alcohols, especially **ethanol, propanol, glycerol** or glycols, in an amount of up to 10 percent by weight (col. 6, lines 46-50). While the invention has been illustrated and described as embodied in hair wax products containing waxes, non-volatile oils and volatile hydrophobic materials, it is not intended to be limited to the details shown, since various modifications and changes may be

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made without departing in any way from the spirit of the present invention (col. 8, lines 36-41). The same components with the same concentration has the same characteristics and properties as taught by Stein et al. and will result in the claimed invention.

Consequently, the reference anticipates the claimed invention defined in claims 25-32.

***Response to Arguments***

In view of new ground of rejection Applicant's remarks and arguments are rendered moot.

***Conclusion***

No claims of the present application are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner 1614

March 19, 2009

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614